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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

L.M.W., individually, and as the biological
father and on behalf of L.W., a minor,

Plaintiff,

vs.

The State Of Arizona; Jonas Perry and Jane
Doe Perry, Husband and Wife; Anita
McDonald and John Doe McDonald, Wife and
Husband; Anna Apolinar and John Doe
Apolinar, Wife and Husband; Christina Gary
and John Doe Gary, Wife and Husband;
Brittany Scott-Membrila and John Doe
Membrila, Wife and Husband; Sonya Tyus
And James Tyus, Wife and Husband; A New
Leaf, Inc., and Arizona nonprofit corporation,

Defendant.

Case No. 2:22-cv-00777- JAT

**PLAINTIFFS' RESPONSE TO
COURT ORDER [Doc 99]**

Assigned to the
Hon. James A. Teilborg

I. Introduction

The Court recently ordered Plaintiff L.M.W. to file a supplement to his motion to seal (Doc. 93) addressing three issues. *See* Doc. 99. First, the Court requested briefing on whether L.W. needs to be substituted in as an additional plaintiff in this case based on the

1 Court’s belief that L.W. is no longer a minor. Second, the Court asked L.M.W. to explain
2 what legal authority permits L.M.W. and L.W. to continue to be referred to solely by their
3 initials if L.W. is now an adult. And third, the Court stated it would allow L.M.W. “to
4 more robustly brief why the facts of this case should not be public record, particularly if
5 L.W. is allowed to proceed by only his initials.” Doc. 99, at 3.

6 The framing of the first two issues on which the Court requested additional briefing
7 relies on an incorrect factual premise: that L.W. is no longer a minor. L.W. remains a
8 minor under the age of 12.¹ Because L.W. is a minor, he does not need to be substituted
9 in as an additional plaintiff in this case. L.W.’s continued status as a minor likewise
10 necessitates that he still be referred to only by his initials. And, to prevent L.W.’s identity
11 from being easily discovered, the court should also allow L.M.W. to continue to be known
12 in the public record of this case by only his initials. Similarly, the court should grant
13 L.M.W.’s motion seeking permission to file the unredacted copy of the state-court
14 complaint under seal, just as it was filed under seal in the state court, because it contains
15 the full names of other relatives of L.M.W. Absent redaction or the use of initials,
16 pseudonyms, or descriptive titles—rather than actual names—to identify those relatives
17 in the publicly-available copy of the complaint, L.M.W.’s anonymity will be
18 compromised.

19 Thus, should the court grant the motion to seal the unredacted copy of the
20 complaint, L.M.W. will contemporaneously file a copy of the complaint in the public
21 record that redacts the names of L.M.W., L.W.’s mother, L.W.’s paternal grandmother,
22 and L.W.’s paternal aunt—replacing those names with initials for L.M.W. and with the
23 pseudonyms “Mother” for L.W.’s mother, “Paternal Grandmother” for L.W.’s paternal
24 grandmother, and “Paternal Aunt” for L.W.’s paternal aunt—but that leaves unredacted
25

26 ¹ Should the district court require proof of L.W.’s age, L.M.W. can submit appropriate
27 proof upon request or court order in a manner that complies with Federal Rule of Civil
28 Procedure 5.2(a). But L.M.W. does not believe L.W.’s continued status as a minor is a
fact that is disputed by the defendants, who are fully aware that L.W. is still a minor.

1 the factual allegations that were blacked out in the copy of the complaint filed in the public
2 record in the state court. This approach should alleviate the court's concerns about not
3 sealing information that is central to the case while simultaneously protecting the identity
4 of the minor, L.W.

5 **II. Analysis**

6 **A. L.W. does not need to be substituted in as a plaintiff in this case.**

7 The first point on which the Court requested additional briefing revolves around
8 the question of standing. L.W. would only need to be substituted in as an additional
9 plaintiff in this case if his father, L.M.W., lacks standing to maintain L.W.'s gross
10 negligence, willful and wanton conduct/negligence, and section 1983 civil rights claims
11 on L.W.'s behalf. Under Arizona law, "[e]ither parent may maintain an action for the
12 injury of a child." A.R.S. § 12-641. Thus, as L.W.'s father, L.M.W. has standing to
13 maintain this action and represent his minor child, L.W., in prosecuting L.W.'s claims
14 against the defendants. *See Reben v. Ely*, 146 Ariz. 309, 310, 705 P.2d 1360, 1361 (Ct.
15 App. 1985) ("The purpose of § 12-641 is to specify who may bring an action to represent
16 an injured child"). And L.M.W. also has standing to maintain his own, derivative loss
17 of consortium claim. *See Howard Frank, M.D., P.C. v. Superior Ct.*, 150 Ariz. 228, 229,
18 722 P.2d 955, 956 (1986) ("Arizona has joined those jurisdictions which allow recovery
19 for loss of filial consortium of a minor child where the child has been severely injured by
20 the negligence of a third party"). L.W. does not therefore need to be substituted in as an
21 additional plaintiff in this case.

22 **B. Both L.W. and L.M.W. should continue to be referred to in this case solely** 23 **by their initials.**

24 The fact that L.W. remains a minor also helps resolve the second point on which
25 the court requested additional briefing. Both L.W. and his father, L.M.W., should continue
26 to be referred to in publicly-filed case documents solely by their initials to prevent L.W.'s
27 identity from being disclosed and thereby protect L.W. from the harassment, injury,
28 ridicule, and personal embarrassment that will likely result if L.W. is publicly identified.

1 Generally, documents filed with the court that contain the name of an individual
2 known to be a minor may only include the minor's initials. Fed. R. Civ. P. 5(a)(3). This
3 procedural rule "acknowledges the privacy interests of minor children by allowing parties
4 to reference minors only by their initials." *J.W. v. D.C.*, 318 F.R.D. 196, 199 (D.D.C.
5 2016). In cases involving a minor's parent, however, the protection provided by this rule
6 "would be eviscerated unless the parent was also permitted to proceed using initials." *Id.*

7 Additionally, in the Ninth Circuit parties may proceed anonymously or through the
8 use of pseudonyms "when special circumstances justify secrecy" or "when nondisclosure
9 of the party's identity is necessary to protect a person from harassment, injury, ridicule or
10 personal embarrassment." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058,
11 1067-68 (9th Cir. 2000) (cleaned up). Thus, a party may preserve his or her anonymity
12 when "the party's need for anonymity outweighs prejudice to the opposing party and the
13 public's interest in knowing the party's identity." *Id.*

14 Several courts in the Ninth Circuit have concluded that when a case involves
15 allegations of sexual assault, "any prejudice the defendant may face does not favor
16 requiring" the alleged victim of the assault "to disclose her [or his] identity, and that the
17 public's interest in allowing alleged victims of sexual assault to proceed anonymously
18 outweighs any public interest" in knowing the victim's identity. *Doe K.G. v. Pasadena*
19 *Hospital Ass'n, Ltd.*, No. 218CV08710ODWMAAX, 2019 WL 1612828, at *1 (C.D. Cal.
20 Apr. 15, 2019) (collecting cases). And the Ninth Circuit has a "tradition of not revealing
21 names of the victims of sexual assault," which it honors by using initials in its decisions
22 to protect the privacy of those victims. *Jordan v. Gardner*, 986 F.2d 1521, 1525 n.4 (9th
23 Cir. 1993).

24 Here, L.W. is a minor and therefore any document filed with the court that contains
25 his name may only include his initials, unless this Court orders otherwise. Fed. R. Civ. P.
26 5.2(a)(3). Under the special circumstances of this case, which involves allegations that
27 L.W. was sexually abused, it is particularly important that L.W.'s identity not be disclosed
28

1 to protect him from the severe personal embarrassment and injury, as well as the possible
2 harassment and ridicule, he will likely suffer if his identity is revealed. *See Pasadena*
3 *Hospital*, 2019 WL 1612828, at *1. Thus, L.W. should continue to be identified in this
4 case only by his initials.

5 For the same reason, L.W.’s father should likewise continue to be referred to in
6 publicly-filed case documents solely by his initials “L.M.W.” As other courts have
7 recognized in cases involving minors, “a parent’s identity, if disclosed, could jeopardize
8 the child’s confidentiality.” *J.W.*, 318 F.R.D. at 199 (cleaned up). Thus, to protect L.W.’s
9 anonymity and privacy rights, the court should permit L.M.W. to continue to be known
10 only by his initials in the publicly-filed documents for this case.

11 **C. The unredacted copy of the complaint should still be filed under seal**
12 **because it includes the full names of three of L.W.’s relatives, whose**
13 **identities in turn can be used to identify L.W.**

14 The third point on which the Court invited additional briefing is why the facts of
15 this case should not be public record if L.W. is allowed to proceed by only his initials.
16 L.M.W. initially moved for leave to file the unredacted copy of the complaint under seal
17 with this Court because the state court had previously ordered that the unredacted copy of
18 the complaint be filed under seal when the case was initiated. *See* Minute Entry filed Mar.
19 28, 2022, attached hereto as Ex. 1. L.M.W.’s motion to seal was motivated by a desire to
20 protect L.W.’s privacy interests. But the protection of those interests afforded by allowing
21 L.W. and L.M.W. to be known only by their initials will be eviscerated if a completely
22 unredacted copy of the complaint is filed in the public record of this case because the
23 unredacted copy of the complaint sealed by the state court discloses the full names of
24 L.W.’s mother, paternal grandmother, and paternal aunt—all of whom are not parties to
25 this case.

26 The Ninth Circuit has used pseudonyms to conceal the identity of both parties and
27 nonparties to a case where necessary “to protect a person from harassment, injury, ridicule
28 or personal embarrassment.” *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1980).

1 As explained above, this case is an “unusual case” in which the use of pseudonyms or
2 initials are necessary to protect the privacy of a minor, L.W., who was the victim of sexual
3 abuse and whose identity could be easily discerned if the actual names of his close
4 relatives who are identified in the unredacted copy of the complaint are not changed in the
5 copy of the complaint filed in the public record.

6 Accordingly, L.M.W. requests that the Court permit him to file the unredacted copy
7 of the complaint under seal, and contemporaneously file a copy of the complaint in the
8 public record that redacts the names of L.M.W., L.W.’s mother, L.W.’s paternal
9 grandmother, and L.W.’s paternal aunt, replacing those names with initials for L.M.W.
10 and with the descriptive-title pseudonyms “Mother” for L.W.’s mother, “Paternal
11 Grandmother” for L.W.’s paternal grandmother, and “Paternal Aunt” for L.W.’s paternal
12 aunt.² All other materials that were blacked out in the redacted copy of the complaint filed
13 in the public record in the state court would be left unredacted in the copy of the complaint
14 filed in the public record in this court. This proposed approach appropriately balances
15 L.W.’s need for anonymity and the interests weighing in favor of open judicial
16 proceedings. No information central to the case will be sealed other than the actual names
17 of the L.W.’s relatives that could be used to determine L.W.’s identity if not redacted from
18 the public record. And, as the Fifth Circuit has aptly explained: “Party anonymity does
19 not obstruct the public’s view of the issues joined or the court’s performance in resolving
20 them. The assurance of fairness preserved by public presence at a trial is not lost when
21 one party’s cause is pursued under a fictitious name.” *Doe v. Stegall*, 653 F.2d 180, 185
22 (5th Cir. 1981).

23 **III. Conclusion**

24 For the foregoing reasons, L.M.W. requests this court grant his motion to file the
25 unredacted copy of the complaint under seal, and further permit him to file a redacted copy

26
27 ² Although the unredacted copy of the complaint primarily refers to L.M.W. by his initials,
28 there are a few instances where the complaint inadvertently includes his first name. It is
those uses of his first name that L.M.W. seeks to redact and replace with his initials.

of the complaint in the public record that only removes the names of L.M.'s father, mother, paternal grandmother, and paternal aunt, and replaces those names with initials for his father, the pseudonym "Mother" for his mother, the pseudonym "Paternal Grandmother" for his paternal grandmother, and the pseudonym "Paternal Aunt" for his aunt.

RESPECTFULLY SUBMITTED this 27th day of October, 2023.



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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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